

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE

FILED August 4, 1999 Cecil Crowson, Jr. Appellate Court Clerk
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RONALD VANDERGRIFF,)	
)	KNOX CHANCERY
Plaintiff/Appellee)	
)	
v.)	NO. 03S01-9807-CH-00079
)	
NATIONAL UNIFORM SERVICE,)	
)	HON. H. DAVID CATE,
Defendant/Appellant)	CHANCELLOR

For the Appellant:

Dana C. Holloway
James P. Catalano
Leitner, Williams, Dooley
& Napolitan, PLLC
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For the Appellee:

Jennifer P. Craig
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MEMORANDUM OPINION

Members of Panel:

Justice Frank F. Drowota, III
Senior Judge John K. Byers
Special Judge Roger E. Thayer

AFFIRMED

BYERS, Senior Judge

OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The trial court awarded the plaintiff 75 percent permanent partial impairment to the body as a whole.

The defendant says the evidence preponderates against this finding.

We affirm the judgment of the trial court.¹

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial court in a workers' compensation case. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

On November 16, 1994, while in the course of his employment with the defendant, the plaintiff sustained a back injury. The plaintiff had a previous back injury in 1992 and was paid workers' compensation benefits in the amount of 7 percent to the body as a whole.

The resolution of this appeal depends upon the evaluation of the value of the medical testimony, which was given by deposition.

In a findings of fact and memorandum of law, the trial judge reviewed the findings of Dr. William Kevin Bailey, an orthopedic surgeon, who saw the plaintiff twice after taking over the plaintiff's case upon the death of Dr. John Bell, the original treating physician. The trial judge also reviewed the findings of Dr. Gilbert L. Hyde, an orthopedic surgeon, who saw the plaintiff for purpose of evaluation, and the testimony of Norman E. Hankins, a vocational expert.

¹ The Second Injury Fund was originally a defendant. The Fund was dismissed in the trial court.

Dr. Bailey testified the second back injury (this case) increased the plaintiff's whole body impairment from 7 percent to 12 percent -- a 5 percent increase.

Dr. Hyde testified the plaintiff sustained a 14 percent whole body impairment as a result of the injury at issue in this case.

Dr. Hankins testified the plaintiff was 100 percent vocationally impaired as a result of the injury based upon Dr. Hyde's testimony and less than 100 percent vocationally impaired based upon Dr. Bailey's testimony.

The defendant insists that the testimony of Dr. Bailey should be taken over the testimony of Dr. Hyde because Dr. Bailey was the treating physician.

The trial judge is not required to take the testimony of a treating physician over the testimony of an examining physician. A trial judge may choose the testimony of one expert over that of others. *Johnson v. Midwesco, Inc.*, 801 S.W.2d 804, 806 (Tenn. 1990).

We, of course, may weigh the credibility of the experts in this case because they testified by deposition. *Cooper v. INA*, 884 S.W.2d 446, 451 (Tenn. 1994); *Landers v. Fireman's Fund Ins. Co.*, 775 S.W.2d 355, 356 (Tenn. 1989). The trial judge obviously accepted the testimony of Dr. Hyde on the issue of impairment. We find no reason to disagree with this finding.

The judgment of the trial court is affirmed and the costs of this appeal are taxed to the defendant.

John K. Byers, Senior Judge

CONCUR:

Frank F. Drowota, III, Justice

Roger E. Thayer, Special Judge

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Cecil Crowson, Jr.
Appellate Court
Clerk

RONALD VANDERGRIFF,)	KNOX CHANCERY
)	No. 125638-2
Plaintiff-Appellee,)	
)	
v.)	No. 03S01-9807-CH-00079
)	
)	
NATIONAL UNIFORM SERVICE)	H. David Cate
INC.)	Chancellor
)	
Defendant-Appellant.)	

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the Appellant, National Uniform Service and Dana C. Holloway, surety, for which execution may issue if necessary.

08/04/99